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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

Case No. **2010-302**

14 **ANDREW ANDERSON BRANKER**
5226 East Madison Avenue
15 Fresno, CA 93727

ACCUSATION

16 **Registered Nurse License No. 634138**

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 **License History**

25 2. On or about March 11, 2004, the Board of Registered Nursing issued Registered
26 Nurse License Number 634138 to Andrew Anderson Branker ("Respondent"). The license was
27 in full force and effect at all times relevant to the charges brought herein and will expire on
28 November 30, 2011, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code"), unless otherwise indicated.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

5. Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

6. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, . . .

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

7. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

1 **COST RECOVERY**

2 8. Code section 125.3 provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Criminal Conviction)**

8 9. Respondent is subject to disciplinary action under Code section 2761, subdivision (f),
9 in that Respondent was convicted of crimes substantially related to the qualifications, functions,
10 and duties of a registered nurse, as follows:

11 a. On or about August 4, 2005, in the Superior Court of California, County of
12 San Benito, in the case entitled, *People of the State of California v. Andrew Anderson Branker*
13 (Super Ct. San Benito County, 2005, Case No. CR-05-00726), Respondent was convicted on his
14 plea of no contest of violating Penal Code section 415 (Disturbing the Peace), a misdemeanor.
15 The circumstances of the crime are that on or about December 18, 2004, Respondent had a
16 dispute with his girlfriend's friend and used force and violence upon T.M.

17 b. On or about September 11, 2006, in the Superior Court of California, County of
18 San Mateo, in the case entitled, *People of the State of California v. Andrew Branker* (Super Ct.
19 San Mateo County, 2006, Case No. SM345840), Respondent was convicted on his plea of guilty
20 of violating Vehicle Code sections 23103.5, subdivision (a), (Reckless Driving), a misdemeanor.
21 The circumstances of the crime are that on May 26, 2006, California Highway Patrol officer
22 observed Respondent's vehicle drifting to the right and left sides of the highway lane. The officer
23 conducted an enforcement stop and while talking to Respondent, the officer smelled the odor of
24 an alcoholic beverage emitting from the vehicle. After Respondent performed a series of field
25 sobriety tests, the officer determined Respondent was under the influence of an alcoholic
26 beverage and was transported to the San Mateo County jail. Respondent provided two breath
27 samples with results of .08% each.

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1 c. On or about March 5, 2009, in the Superior Court of California, County of
2 San Benito, in the case entitled, *People of the State of California v. Andrew Branker* (Super Ct.
3 San Benito County, 2006, Case No. CR-08-02860), Respondent was convicted on his plea of
4 guilty of violating Penal Code section 415 (Fighting, Noise, Offensive Words), a misdemeanor.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Criminal Conviction Involving the Consumption of Alcohol)**

7 10. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
8 on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (c), in
9 that Respondent was convicted of a crime involving the consumption of an alcoholic beverage, as
10 set forth in paragraph 9, subparagraph (b), above.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Use an Alcoholic Beverage to the Extent or in a**
13 **Manner Dangerous or Injurious to Himself or Others)**

14 11. Respondent is subject to disciplinary action under Code section 2762, subdivision (a),
15 on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (b), in
16 that Respondent consumed an alcoholic beverage to an extent or in a manner dangerous or
17 injurious to himself or others, as set forth paragraph 9, subparagraph (b), above.

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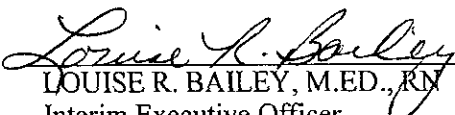
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 634138 issued to Andrew Anderson Branker;
2. Ordering Andrew Anderson Branker to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/17/09


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant